

PRESS Note of 11th May 2011

Exemption from Liability for Hosting Third Party Information: Diligence to be Observed under Intermediary Guidelines Rules

The attention of Government has been drawn to news items in a section of media on certain aspects of the Rules notified under Section 79 pertaining to liability of intermediaries under the Information Technology Act, 2000. These items have raised two broad issues. One is that words used in Rules for objectionable content are broad and could be interpreted subjectively. Secondly, there is an apprehension that the Rules enable the Government to regulate content in a highly subjective and possibly arbitrary manner.

The Department of Information Technology (DIT), Ministry of Communications & IT has clarified that the Intermediaries Guidelines Rules, 2011 prescribe that due diligence need to be observed by the Intermediaries to enjoy exemption from liability for hosting any third party information under Section 79 of the Information Technology Act, 2000. These due diligence practices are the best practices followed internationally by well-known mega corporations operating on the Internet.

The terms specified in the Rules are in accordance with the terms used by most of the Intermediaries as part of their existing practices, policies and terms of service which they have published on their website. In case any issue arises concerning the interpretation of the terms used by the Intermediary, which is not agreed to by the user or affected person, the same can only be adjudicated by a Court of Law. The Government or any of its agencies have no power to intervene or even interpret. DIT has reiterated that there is no intention of the Government to acquire regulatory jurisdiction over content under these Rules. It has categorically said that these rules do not provide for any regulation or control of content by the Government.

The Government adopted a very transparent process for formulation of the Rules under the Information Technology Act. The draft Rules were published on the Department of Information Technology website for comments and were widely covered by the media. None of the Industry Associations and other stakeholders objected to the formulation which is now being cited in some section of media.

The Government has been forward looking to create a conducive environment for the Internet medium to catapult itself onto a different plane with the evolution of the Internet. The Government remains fully committed to freedom of speech and expression and the citizen's rights in this regard.

SP/AS

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